

## **Barriers to Credibility: Understanding and Countering Rape Myths**

by

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### **Introduction**

Human beings understand the world in terms of stories. Good prosecutors develop a theme and story for each case to make their view of the events charged accessible and credible to the jury. But what happens when the jury comes with its own story of what events would constitute a particular crime, and the prosecutor's case does not match the story line? Nowhere is this a greater problem than in rape cases. Here a narrative about what constitutes "real rape" is so deeply embedded in society's consciousness, and so at odds with the reality of the vast majority of these cases, that the prosecutor must struggle not just to tell a credible story, but to tell it in a way that overcomes jurors' expectations. As Professor Morrison Torrey writes in her summary of the research on juror decision-making in rape cases:

Jurors will even distort and twist evidence until it becomes consistent with their attitudes. These fundamental premises that jurors bring with them to the courtroom are what psychologists call "cognitive structures." While cognitive structures allow individuals to learn new information, they tend to perpetuate themselves by screening out information that is inconsistent with what is already believed. Cognitive inflexibility is what prosecutors face in trying to convict rapists when jurors have cognitive structures based on rape myths. Jurors will strive to reach a verdict in a rape case that will not conflict strongly with the rape myth cognitions they hold at the beginning of the trial.<sup>1</sup>

Over the last two decades, research about rape and attitudes toward rape has revealed a chasm between the stereotype and reality. In the stereotyped narrative about "real rape" that has infiltrated the public mind, rape is an infrequent crime in which a degenerate, sex-starved, knife-wielding stranger jumps from the bushes to attack a blameless, nubile young woman. After the rape, the woman reports immediately to the police and is then admitted to the hospital for treatment

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of her savage physical injuries, sustained while resisting to the utmost. But in reality, the vast majority of rapes are nothing like the stereotype. The overwhelming statistical profile of rape documents a commonplace crime committed by a man with an active consensual sex life on a woman he knows, often in her own home. He uses no weapon, but she offers little, if any, physical resistance because she is terrified into passivity, fears serious physical injury or death, or was taken totally by surprise because she did not fear a "friend." The woman never reports the rape to the police. She sustains no physical injury other than the rape itself, but her psychological injuries are profound.

Effective victim advocacy requires grounding in the empirical data that debunks these myths. Below are seventeen myths about rape, each followed by the facts.

### **Rape Myths and Facts**

**Myth 1. Rape is a crime committed by men who are strangers to their victims.**

**Fact: The vast majority of rapes are committed by someone the victim knows.<sup>2</sup>**

The most current and complete study of the incidence of rape and sexual assault on female victims in the United States is *Rape in America*, conducted by the Crime Victims Research and Treatment Center of the Medical University of South Carolina and published in April 1992. For this study, a nationally representative sample of 4,008 women over age 18 was interviewed once a year for three years. Respondents were asked four highly specific questions as to whether a man or boy had ever made them have vaginal sex, oral sex, anal sex or had ever effected penetration with a finger or object against their will, using force or threat.<sup>3</sup>

The study found that only 22% of forcible rapes and sexual assaults were committed by strangers.<sup>4</sup> As for the 78% of rapes committed by nonstrangers, the study found: 9% were committed by husbands and ex-husbands; 11% by fathers and stepfathers; 10% by a boyfriend or ex-boyfriend; 16% by other relatives; and 29% by other non-relatives such as friends and neighbors.<sup>5</sup>

In sum, **approximately 80% of rapes are committed by someone known by or related to the victim.**

**Myth 2. "Rape" means only penile/vaginal penetration.**

**Fact:** Although the term "rape" has traditionally meant penile/vaginal penetration, **many state statutes today define rape as any type of sexual assault that involves forced penetration:** that is, vaginal, oral, digital (or other body part) and object rape.<sup>6</sup> In the *Rape in America* study, 507 rape victims provided information about a total of 714 rape incidents they experienced as adults:

424 forced penile-vaginal penetration rapes;  
122 forced oral penetration rapes;

53 forced anal penetration rapes;  
189 forced digital/object penetration rapes.<sup>7</sup>

Of these several types of penetration, Dr. Nicholas Groth, a prominent expert on sex offenders, has written:

[F]rom a clinical rather than a legal point of view, it makes more sense to regard rape as any form of forcible sexual assault, whether the assailant intends to effect intercourse or some other type of sexual act. There is sufficient similarity in the factors underlying all types of forcible sexual assault -- and in the impact such behavior has on the victim -- so that they may be discussed meaningfully under the single term of rape.<sup>8</sup>

Dr. Anna Salter, a national expert in the treatment of sexual assault victims and offenders, reports that some victims forced to perform fellatio or submit to cunnilingus or anal penetration suffer even more trauma than victims of penile/vaginal rape because of the shame many people feel about these kinds of sexual acts.<sup>9</sup>

**Myth 3. A woman who was truly being raped would offer utmost physical resistance.**

**Fact: Many rape victims offer no physical resistance whatsoever.** Despite changes in rape law to eliminate the requirement for earnest resistance, the lingering demand for evidence of physical resistance on the part of some judges and jurors reflects a lack of awareness of how rape usually happens.

There are several reasons why many victims do not resist. The first is **women's lifetime of socialization to be nice**. Many victims do not resist at the start of an assault because they are afraid of embarrassing themselves or the assailant. Women and girls are socialized from birth to be polite, to smile, not to offend and not to say "no" because it may hurt someone's feelings. By the time these women realize how much danger they are in, it is too late to resist.

Second is the fact that **men's greater size and strength are in themselves threatening to women and are often enough either to intimidate the victim or to overcome her resistance**.<sup>10</sup> Even when no force is used beyond the intimidation factor of the man's size and/or greater strength, women experience great fear and indeed often fear for their lives. "I thought he was going to kill me" is a common statement from rape victims.<sup>11</sup> In the *Rape in America* study 49% of rape victims feared serious physical injury or death.<sup>12</sup> **This fear causes some women to make a strategic decision not to offer physical resistance. They believe with good reason that submission will increase their chances of surviving the rape, or surviving without major physical injury.**

**Other women experience one of two terror-induced altered states of consciousness called *dissociation* and *frozen fright* which render them totally passive.** For some victims of both stranger and nonstranger rape the psychic stress is so extreme that they dissociate during the

rape, saying later that they felt it was a terrible dream, or that it was as if the attack were happening to their body and they were watching it from the outside. As Judith Herman of Harvard Medical School writes:

Sometimes situations of inescapable danger may evoke not only terror and rage but also, paradoxically, a state of detached calm, in which terror, rage, and pain dissolve. Events continue to register in awareness, but it is as though these events have been disconnected from their ordinary meanings. Perceptions may be numbed or distorted, with partial anesthesia or the loss of particular sensations. Time sense may be altered, often with a sense of slow motion, and the experience may lose its quality of ordinary reality. The person may feel as though the event is not happening to her, as though she is observing from outside her body, or as though the whole experience is a bad dream from which she will shortly awaken. These perceptual changes combine with a feeling of indifference, emotional detachment, and profound passivity in which the person relinquishes all initiative and struggle. This altered state of consciousness might be regarded as one of nature's small mercies, a protection against unbearable pain. A rape survivor describes this detached state: "I left my body at that point. I was over next to the bed, watching this happen. . . . I dissociated from the helplessness. I was standing next to me and there was just this shell on the bed. . . . There was just a feeling of flatness. I was just there. When I repicture the room, I don't picture it from the bed. I picture it from the side of the bed. That's where I was watching from."<sup>13</sup>

Other women do not resist because they are literally frozen with fright. To quote Dr. Herman again:

When a person is completely powerless, and any form of resistance is futile, she may go into a state of surrender. The system of self-defense shuts down entirely. The helpless person escapes from her situation not by action in the real world but rather by altering her state of consciousness. Analogous states are observed in animals, who sometimes "freeze" when they are attacked. These are the responses of captured prey to predator or of a defeated contestant in battle. A rape survivor describes her experience of this state of surrender: "Did you ever see a rabbit stuck in the glare of your headlights when you were going down a road at night. Transfixed--like it knew it was going to get it--that's what happened." In the words of another rape survivor, "I couldn't scream. I couldn't move. I was paralyzed. . . like a rag doll."<sup>14</sup>

These phenomena of dissociation and frozen fright were critical issues in two recent state supreme court cases *Commonwealth v. Berkowitz*<sup>15</sup> and *People v. Iniguez*,<sup>16</sup> that illustrate how important it is that judges understand the operation of rape trauma during a sexual assault. These cases bear out the observation of the Ninth Circuit Court of Appeals in the well-known sexual harassment case, *Ellison v. Brady*, that "[m]en, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or underlying threat of violence a woman may perceive."<sup>17</sup>

### **Dissociation: *Commonwealth v. Berkowitz***

Many aspects of the *Commonwealth v. Berkowitz*<sup>18</sup> case are a paradigm of what happens in nonstranger rape cases, where women's socialization to be polite and a sudden attack by someone who seems to be a friend and it is not obviously dangerous combine to defeat whatever defenses the woman might present in another setting.

Berkowitz' victim came to visit a friend in a college dorm. He was not there but his roommate was. He (the roommate) asked her to stay and talk. She had some time and wanted to be polite. He sat on his bed. She sat on the floor. They talked. He moved to the floor and started kissing her and lifting up her shirt and bra. At trial the prosecutor asked, "Were you saying anything?" She replied, "At first I was saying, 'Look, I gotta go. I'm going to meet Craig.' Just basically stuff to be nice instead of saying you know, 'Get away from me.' I don't like offending people..."<sup>19</sup>

This response may seem foolish. But victim behavior like this in a nonstranger rape is commonplace because this is the way girls and women are taught to behave. This socialization to be polite in every situation is so powerful that advice manuals for women about avoiding rape now state: If you are in an elevator alone and a strange man gets on, get off and *don't worry about appearing rude*.

When Berkowitz did not respond to polite refusals, his victim began saying, "no." suddenly he was straddling her upper body, trying to push his penis into her mouth. She kept saying, "No, I gotta go, let me go." "What were you feeling?" asked the prosecutor. "*I was scared*."<sup>20</sup>

The victim tried to push herself up and away from the defendant and he stood up with her so they got up in "kind of like a joint effort." He walked two or three feet to the door. She thought she was going to be able to leave. Instead he locked the door. "What were you feeling at that point in time?" asked the prosecutor. "Well, when I first got up, I was kind of relieved because I thought it was over and then when I saw I couldn't get out, *I got scared again*."<sup>21</sup>

Berkowitz was between the victim and the door. He pushed her on the bed, lay on top of her, pulled off her sweatpants and underwear, penetrated her with his penis for 30 seconds, pulled out and ejaculated on her stomach. All of this – from the first kiss to ejaculation – took about 90 seconds.

The prosecutor asked the victim what she was doing while Berkowitz pulled off her

sweatpants and underwear. "I was kind of laying there. *I was so scared* and he was like on top of me. He was straddling me. I couldn't like go anywhere."

"Why didn't you scream?" asked the prosecutor.

"I don't know," testified the victim. "I just – *It was like a dream was happening or something.*"<sup>22</sup>

The level of fear Berkowitz' victim experienced was also apparent in her post-rape behavior. She went immediately to her friends, who called the campus police. The officer who responded testified that she found the victim crying hard, distraught, and curled in a fetal position. Her curling up in a fetal position is a manifestation of the regression that often occurs in situations of extreme fear.

The victim's testimony that "It was like a dream was happening" is the language that an ordinary person uses to describe dissociation. And, as Dr. Herman explains, dissociation produces "*profound passivity in which the person relinquishes all initiative and struggle.*"<sup>23</sup>

Because the victim did not try to unlock the door and fell onto the bed with only a mild shove from the defendant, the court perceived that no force was used and overturned Berkowitz' rape conviction. The court did not understand that the victim was totally passive because she had been terrified into dissociating, and that from her perspective, the defendant's action of locking the door – sending the clear message that he intended to continue the assault begun on the floor – constituted forcible compulsion.<sup>24</sup>

### **Frozen Fright: *People v. Iniguez***

In *People v. Iniguez* there were no weapons, no physical assault apart from the rape and no threats. Indeed the rapist never said a word. But the victim was so frozen with fright that she not only offered no physical resistance, she did not even say "no." She lay still and silent throughout the brief assault, yet the rape conviction was affirmed.

In *Iniguez* the victim was spending the night before her marriage at the home of a close family friend who was to stand in for her mother at the wedding. At dinner the victim met her friend's boyfriend. She saw that he was tipsy and watched him drink more wine. She also saw that he was a very big man, weighing a hundred pounds more than she.

The victim went to sleep on top of a sleeping bag on her friend's living room floor. During the night she was awakened by some movements behind her. She was lying on her stomach and she saw her friend's boyfriend looming behind her, naked. Without a word he pulled off her pants and raped her. The victim testified that for the first seconds after she awoke she did not know what was happening, then she "was afraid, so I just laid there." "You didn't try to resist or escape or anything of that nature because of your fear?" asked the prosecutor. "Right" the victim replied.<sup>25</sup> The officer who interviewed the victim several days afterward testified, "She said she knew that the man had been drinking. She hadn't met him before; he was a complete stranger to her. She was afraid that if

she said or did anything, his reaction could be of a violent nature. So she decided just to lay still, wait until it was over with and then get out of the house as quickly as she could..."<sup>26</sup>

After the rape the victim was terrified that the defendant would come back for her. She telephoned a friend to come and get her, grabbed her purse and shoes, and hid in the bushes outside the apartment for half an hour until her friend arrived.

The defendant acknowledged to police that he had intercourse with the victim. He never claimed that she consented.

California law defines rape as "an act of sexual intercourse accomplished...against a person's will by means of force, violence, or fear of immediate and unlawful bodily injury on the person or another."<sup>27</sup> After Iniguez was convicted, the California Court of Appeal reduced his rape conviction to "sexual battery" on the ground that the evidence of force and fear of immediate and unlawful bodily injury was insufficient. That court wrote:

While the [defendant] was admittedly much larger than the small victim, he did nothing to suggest that he intended to injure her. No coarse or sexually suggestive conversation had taken place. Nothing of an abusive or threatening nature had occurred. The victim was sleeping in her aunt's house, in which screams presumably would have raised the aunt and interrupted the intercourse. Although the assailant was a stranger to the victim, she knew nothing about him which would suggest that he was violent."<sup>28</sup>

This last sentence is truly disturbing. A woman is awakened in the night by a naked man who is a virtual stranger to her hovering over her body. It seems intuitive that this situation spells DANGER, yet this court did not see it. The Court of Appeals also stated that "[the] event of intercourse is singularly unusual in terms of its ease of facilitation, causing no struggle, no injury, no abrasions or other marks, and lasting, as the victim testified, "maybe a minute."<sup>29</sup> The court's statement about the absence of injuries reveals adherence to one of the most pernicious myths about rape: the belief that if a victim were "really" raped she would have physical marks from the assault. As discussed below in Myth 4, forced sexual intercourse usually leaves no physical traces distinct from those of voluntary sexual activity, and vaginal abrasions in rape cases are the rare exception rather than the norm.

The California Supreme Court reversed and reinstated the rape conviction. It noted the testimony of the rape trauma expert who appeared at trial that victims respond in a variety of ways to being raped. Some try to flee, others are paralyzed by fear in the reaction known as "frozen fright." The court addressed the objective and subjective components of the element of fear of immediate and unlawful bodily injury. With respect to the victim's subjective fear, the court cited a 1951 California case, which is remarkable for its early understanding of this much-misunderstood crime. "The kind of physical force that may induce fear in the mind of a woman is immaterial...it may consist in the taking of indecent liberties or of embracing and kissing her against her will."<sup>30</sup>

With respect to the objective component of the California court's inquiry -- was the victim's fear reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim's subjective fear and took advantage of it -- the California Supreme Court had a much different understanding than the Court of Appeal as to how a woman should assess a naked stranger looming over her in her sleep. The Court pointed out that Iniguez weighed twice as much as the victim, and that he accosted her while she slept in the home of a close friend, thus violating her enhanced level of security and privacy. The court continued:

Defendant, who was naked, then removed Mercy's pants, fondled her buttocks, and inserted his penis into her vagina for approximately one minute, without warning, without her consent, and without a reasonable belief of consent. Any man or woman awakening to find him- or herself in this situation, could reasonably react with fear of immediate and unlawful bodily injury. Sudden, unconsented to groping, disrobing and ensuing sexual intercourse while one appears to lie sleeping is an appalling and intolerable invasion of one's personal autonomy that, in and of itself, would reasonably cause one to react with fear.<sup>31</sup>

The California Supreme Court concluded. "The Court of Appeal's suggestion that [the victim] could have stopped the sexual assault by screaming and thus eliciting her aunt's help, disregards ...the ... elimination of the resistance requirement. *It effectively guarantees an attacker freedom to intimidate his victim and exploit any resulting reasonable fear so long as she neither struggles nor cries out.*"<sup>32</sup> (Emphasis supplied.)

No one can know in advance how she or he will react to the threat of sexual assault. The automatic nervous system hardwires each of us to either fight, flee or freeze in response to danger, and it is this automatic response that takes over in a rape.

**Myth 4. A "true victim" is one who sustains serious, visible physical injuries such as knife wounds, broken bones, severe lacerations, heavy bruising or vaginal tears.**

**Fact: Physical injuries apart from the rape itself are rare and sexual assault leaves no visible physical "evidence" different from consensual sexual activity.** In the *Rape in America* study, 70% of victims reported no physical injuries; 24% of victims reported minor physical injuries; only 4% reported serious physical injuries.<sup>33</sup> Approximately 1% of rape victims have moderate to severe genital injuries.<sup>34</sup>

Many judges and jurors want evidence of physical damage, which they perceive as proof of the victim's lack of consent. They erroneously equate the victim's injuries with her level of resistance, which they in turn take to be a measure of the rapist's use of force. Some prosecutors, judges, and jurors mistakenly assume that vaginal injuries are the *sine qua non* of forcible



compulsion. In the *Iniguez* case cited above, the California Court of Appeal reduced a first-degree rape conviction to "sexual battery" on the ground that the evidence of force and fear of immediate and unlawful bodily injury was insufficient. The appellate court was particularly dubious because "[t]he event of intercourse...[left]...no abrasions or other marks..."<sup>35</sup> In a California university mock jury study involving student subjects, one group of women "jurors" was sure that because the victim had no injuries "there," where "you would expect to see them if she's been raped," there was no rape.<sup>36</sup> [Note: A detailed explanation of why there are few visible, physical injuries in rape cases is in the National Judicial Education Program's video, *Presenting Medical Evidence in an Adult Rape Trial*. The entire script is available in the video reference guide at [www.njep.org/medicalevidence](http://www.njep.org/medicalevidence).]

**Myth 5.        A woman who did not sustain serious physical injury during a rape was not injured.**

**Fact: Rape is a profound injury in and of itself.** Many people mistakenly assume that if a rape does not involve serious physical injury, there **is** no injury.<sup>37</sup> Nonstranger rape is particularly misunderstood and often perceived as nothing more than "bad sex."<sup>38</sup> This is especially true if the victim and the offender were having a sexual relationship or were or are married.

In fact, both stranger and nonstranger rapes, including marital rapes, produce severe, long-lasting psychological injury. Because the law has always understood "injury" as a broken arm or a knife wound, the psychological injury that rape victims sustain is sometimes ignored or devalued. Failure to understand the devastating nature of the psychological injury of rape and the extended duration of this injury is a major factor in inappropriately low sentences for offenders.

Because rape is so prevalent and has such severe psychological consequences, it plays a highly damaging role in the mental health of American women. According to *Rape in America*, "3.8 million American women have had Rape-Related Post Traumatic Stress Disorder and an estimated 1.3 million American women currently have RR-PTSD."<sup>39</sup>

This study compared rates of depression among women who were victims of sexual assault and those who were not. Rape victims were 3 times more likely than non-victims of crime to have ever had a major depressive episode, 4.1 times more likely to have contemplated suicide, and 13 times more likely to have made a suicide attempt. The report states, "The fact that 13% of all rape victims have actually attempted suicide confirms the devastating and potentially life threatening impact of rape."<sup>40</sup> The finding of the 1992 Rape in America study corroborate the 1990 Final Report of the American Psychological Association's National Task Force on Women and Depression. That task force found that **a major reason women have higher rates of depression than men is that they are responding to the high level of rape, battering, sexual harassment, and child sexual abuse in their lives.**<sup>41</sup>

**Myth 6.        A woman who was truly raped would immediately report to the police.**

**Fact: The widespread assumption that a true rape victim would immediately call the police is completely inaccurate.** In the Rape in America study, only 16% of rapes were reported to police.<sup>42</sup> Of the small number of cases that were reported, one-quarter were reported more than twenty-four hours after the rape.<sup>43</sup> In a study of 1,000 rape victims who reported to the Beth Israel Hospital Rape Crisis Intervention Center in Boston over a ten year period, the reporting time frames ranged from less than three hours to two weeks after the rape.<sup>44</sup> Victims of nonstranger rapes delayed reporting to the hospital much longer than stranger rape victims. Among the stranger victims, 90% reported in less than 24 hours. Among the nonstranger victims, 90% reported after one week or more.

Police, prosecutors, judges and jurors often perceive a prompt complaint by the victim as crucial to her credibility. Therefore, when failure to report promptly is an issue in the case, it is important to have the victim explain why she did not report and have an expert witness explain why a delayed complaint is the norm rather than the exception for rape victims.<sup>45</sup>

There are many reasons why victims do not report a rape:

- Not knowing the assault was legally rape
- Denial and suppression
- Psychogenic amnesia
- Fear of retaliation
- Fear of being disbelieved and blamed
- Fear of loss of privacy
- Fear of the criminal justice system

In a National Institute of Mental Health study of 3,187 female students on 32 college campuses, 489 women had been forced to engage in sexual activity that met the legal definition of rape, but only 57% of this group labeled their experience as rape.<sup>46</sup> The others did not realize that it is rape or sexual assault even if the victim knows the rapist or if the forced acts were other than penile/vaginal penetration.

**Fear of Retaliation.** Many victims fear that the rapist will retaliate. In *People v. Panichas*,<sup>47</sup> for example, one of the rapist's many victims was the sister of his receptionist. The victim was terrified that if she told her sister what had happened, her sister would refuse to go to work, and the rapist would know she had told someone. Thus, she initially told her sister and the police that a masked man had jumped into her car and raped her.

**Fear of Being Disbelieved and Blamed.** According to *Rape in America*, 69% of rape victims were somewhat or extremely concerned about people thinking the rape was their fault or that they were responsible.<sup>48</sup> Victims' fear of being disbelieved and blamed is powerfully illustrated in a videotape made by a Canadian rape victim named Shari Ulrich, a well-known singer in that country. She states that she was happy the rapist stabbed her after the attack, because she knew then that she would be believed.<sup>49</sup> Although the vast majority of rapes are committed by someone known to the victim, stranger rape is far more likely to be reported to police and rape crisis centers

than nonstranger rapes. The victims of stranger rape are more likely to think of themselves as victims of a crime of sexual assault and think that police will believe them.<sup>50</sup> Because nonstranger rape is so phenomenally underreported, experts in the field refer to it as "hidden rape."<sup>51</sup>

**Fear of Loss of Privacy.** In the *Rape in America* study 71% of victims were somewhat or extremely concerned about their family's knowing they had been sexually assaulted; 68% were worried about people outside their families knowing; 50% worried about their names being made public by the news media.<sup>52</sup>

Sexual assault is unlike any other crime. Mugging victims do not worry that neighbors will talk about what they did to invite the mugging or that everyone will think of them as stigmatized.<sup>53</sup> Many rape victims decide that it is in their best interests to hide the rape and try to go on with their lives as if nothing happened.<sup>54</sup> This is particularly true for victims of nonstranger rapes.<sup>55</sup> This suppression leaves many psychological issues unresolved, causing problems in later life.<sup>56</sup>

**Denial/Suppression.** Denial of all or part of the assault is an extremely common response. This behavior is consistent with an attempt to maintain a belief in normalcy and regain control of one's life.

For example, for 16 years, actress Elizabeth Ashley blocked from her mind the fact that she had been gang-raped.<sup>57</sup> In the case of a woman who accused three Mets players of gang-rape, she said that after the attack, she made the bed and did not realize that she had been raped until three days later.<sup>58</sup> In another New York case, the Chief of the Sex Crimes Unit in Queens received a 6 A.M. telephone call from an Assistant District Attorney reporting that she had been attacked but that there had been no penetration. After meeting the ADA at the hospital, the unit chief learned that there had been oral, vaginal, and anal penetration.

The phenomenon of denial coupled with a severe state of shock can also cause victims to make inconsistent statements about crucial facts surrounding the assault. For example, the victim may acknowledge that she knew the rapist yet not be able to tell the police his name.

**Psychogenic Amnesia.** Some victims completely block any memory of the assault from their minds and do not report until the memory returns because they did not "know" that anything happened to them.<sup>59</sup>

Some victims may lose partial memory. In one New York gang-rape case, the victim could only remember the face of one attacker. A year later, she snagged her hair on something in her home, and her head was jerked backward in a motion similar to something that happened during the rape. This caused the mental picture of a second attacker to return. She reported it to the prosecutor, who went forward with a second indictment.<sup>60</sup>

**Fear of the Criminal Justice System.** A significant percentage of victims fear that if they report the assault, they will be humiliated and blamed by everyone in the criminal justice system from the police to the jurors. They have heard women who have gone through with reporting the

The jury can be helped to understand a victim's delayed reporting in two ways: through the victim's testimony, and, if permitted, through an expert. After the victim testifies, an expert witness can testify that delayed reporting is consistent with the behavior of a sexual assault victim. Remember, however, that a judge may not admit an expert on this point and that a jury may ignore the expert's testimony. Don't rely on the expert to overcome this hurdle. The victim's detailed explanation is what enables the jury to assess the credibility of her reasons for delay. With the victim, use open-ended questions to elicit her thoughts and actions during and after the rape.

**Myth 7.        Being raped by someone you know is far less traumatic than being raped by a stranger.**

**Fact: Rape by someone known to the victim is often *more* traumatic than stranger rape** because self-blame is increased and the ability to trust others is destroyed.

"Blitz rape" and "confidence rape" are terms developed by the clinician/researchers who first used the phrase "rape trauma syndrome" (now understood to be a manifestation of Posttraumatic Stress Disorder/PTSD) to describe stranger and nonstranger sexual assaults.<sup>62</sup> Blitz rape is "a sudden surprise attack by an unknown assailant." Confidence rape involves "some nonviolent interaction between the rapist and victim before the attacker's intention to commit rape emerges."<sup>63</sup> The term "confidence rape" derives from the notion of the rapist gaining the victim's confidence so she will not anticipate an assault and not be on her guard.

Clinical experience indicates both similarities and differences in the issues, concerns and symptoms of blitz and confidence rape victims. The surprising finding is that women raped by someone they know often have a harder time recovering than women raped by strangers. Women raped by nonstrangers are more likely to keep their rape secret because of guilt and shame, more likely to be blamed by themselves and others, and less likely to believe themselves deserving of sympathy and professional help.<sup>64</sup>

Nonstranger rape also has a unique effect on the victim's ability to form relationships. According to Dr. Veronica Reed Ryback, director of the Beth Israel Hospital (Boston) Rape Crisis Intervention Center, "Another name we give acquaintance rape is confidence rape because it's such a betrayal of confidence. The perpetrator has used the relationship to gain access to the victim, and the victim's beliefs about who she is and who she can trust are shattered."<sup>65</sup> However, calling this type of rape "betrayal rape" may be a more accurate and evocative formulation because it immediately conveys how the victim feels.

**Myth 8.        There is no such thing as marital rape, and even if a man pressures his wife for sex, there is no reason she should find it as upsetting as rape by a stranger.**

**Fact:** Even where there is no extrinsic violence, the psychological trauma of marital rape is especially profound because trust is shattered in the individual whom the woman normally has the most reason to trust.<sup>66</sup> One study found that "[w]omen raped by husbands or family members, particularly when compared with women raped by nonromantic acquaintances or casual dates, gave more severe ratings of their anger and depression and of the offender's aggression."<sup>67</sup> The fear of repeated attacks is especially severe because, unless the wife immediately leaves or is able to force the man to leave, she must live with not only the rape, but also with the rapist.

Marital rape is the most misunderstood area of sexual assault. Some people simply do not believe that a man can rape his wife.<sup>68</sup> Others assume that, since the couple is presumably accustomed to having sexual intercourse, the alleged rape is nothing more than "bad sex."<sup>69</sup> Yet, studies of marital rape have shown that these rapes sometimes involve levels of violence as high as that for stranger rape.<sup>70</sup> For example, in a 1992 South Carolina case which resulted in an acquittal even though the husband recorded the rape on videotape, the defendant tied his wife to the bed, covered her eyes and ears with duct tape, slapped her genitals, and threatened her with a knife, which he later used to trace circles around her breasts before raping her.<sup>71</sup>

Marital rape occurs independently of and in conjunction with wife battering. Diana Russell, a sociologist and prominent researcher in the area of violence against women, reports the following statistics for marriages in which the wife was abused: in 23% of these marriages wife rape was the major or only problem; in 22%, wife rape and wife beating were problems of about equal significance.<sup>72</sup> Russell also found that wife rape occurred frequently in higher income groups.<sup>73</sup>

**Myth 9. After the initial shock, rape victims can readily put the assault behind them and move on with their lives.**

**Fact:** Numerous psychological studies have documented the long-term trauma of rape. Six months after being raped, the majority of victims still experience what one researcher called a distinct "core of distress."<sup>74</sup> Another study documented that at 15 to 30 months after being raped, more than 40 percent of victims still suffered sexual dysfunction, restricted social interaction, suspicion, fears and depression.<sup>75</sup> Three years after the rape, a variety of psychological symptoms persist, leading researchers to believe that many victims never recover completely. In one study of criminal victimization of a community-based sample of 391 women in Charleston, South Carolina, 23.3% of the women had been victims of completed rape. Of those women, 57% developed Post Traumatic Stress Disorder. At the time of the assessment, which was an average of 15 years post-rape, 16.5% of the rape victims who had not had treatment had current symptoms of PTSD.<sup>76</sup>

Every victim responds individually and some victims appear to recover well. In one study, between 20% and 25% of untreated victims were relatively symptom-free one year post-rape, and some victims reported functioning better at this time than they did pre-rape.<sup>77</sup> But the absence of PTSD does not prove that nothing happened. Moreover, we are coming to understand that a one-year follow-up does not tell the full story; the reality is that psychological trauma has no specific end point. As Dr. Judith Herman writes in her book demonstrating the commonalities of the psychological trauma of combat, being taken hostage, torture, child abuse, child sexual abuse,

Resolution of the trauma is never final; recovery is never complete. The impact of a traumatic event continues to reverberate throughout the survivor's lifecycle. Issues that were sufficiently resolved at one stage of recovery may be reawakened as the survivor reaches new milestones in her life.<sup>78</sup>

**Myth 10. A woman who was truly raped would be very upset during trial.**

**Fact: Victims' behavior during trial varies widely according to their personalities, individual strategies for coping with trauma, stages of recovery, life situations, and many other factors.**

Any trial is stressful for the witnesses, but rape trials exact a unique toll on the complainant. As noted earlier, unlike a mugging case, a rape case involves shame for the victim. When a rape case comes to trial, usually within a year after the event, the victim is still fragile and recovering. At a time when she is still striving to overcome flashbacks and recurrent, intrusive thoughts of the rape, she must relive it and start the cycle again, and trial preparation must prepare the victim accordingly. She must publicly recount sexual acts which are normally kept private. She must do so in front of a defendant who not only terrifies her, but who may relish the public recital of his deeds and her humiliation. She is aware that as she tells her story on the witness stand, everyone in the courtroom is seeing that story unfold in his or her mind's eye. She feels she is being figuratively undressed and assaulted in the courtroom. This sense becomes particularly acute if she is left to sit on the witness stand while the judge and counsel engage in lengthy sidebars or even colloquies in chambers, or if she is asked to demonstrate on her own body how the assault occurred. These latter practices should be discouraged.

About half of victims demonstrate a *controlled style*, which means they hide their feelings and appear calm. The other half demonstrate an *expressive style*, which means they display fear, anger, and anxiety by crying, sobbing, smiling, or acting restless or tense. These response styles have ramifications for the victim's credibility in court because many judges and jurors have definite expectations about the way rape victims should behave on the witness stand.

Controlled victims may be disbelieved when they do not cry, because the judge and jury expect some tears. Expressive witnesses who cry "too much" may be dismissed as hysterical. Expressive victims who respond with anger may also be disbelieved because our culture is extremely uncomfortable with angry women. In a Queens, New York, case involving a sexual assault by several members of a university lacrosse team, the jurors said that among the reasons they disbelieved the victim was that on the witness stand she was angry and argumentative during cross examination.<sup>79</sup> One juror said the victim was disbelieved because her demeanor "just didn't coincide with what we felt a victim should behave like."<sup>80</sup> (The defendant who initiated that assault, and who was to be tried separately from the trial at which this happened, later took a plea and admitted the truth of all her allegations in his allocution.)<sup>81</sup>

The display of anger, however, is an initial step in recovery. As Professor Barry Burkhart writes, "At the beginning of [therapy], the client often can feel only the pain of her victimization... As she begins to affirm her victimization, her anger begins to be revealed. Anger provides energy to the work of coping and drives her toward new ways of being in the world."<sup>82</sup>

Knowing all this, how does one prepare a rape victim to testify at trial? Like the advice given to fledgling attorneys to always be yourself and use your own style, not someone else's, trying to make a victim testify as someone she is not can backfire by making her look stiff, uncomfortable, and therefore not credible. If your witness has so extreme a controlled style that you fear jurors will think nothing happened to her, consider asking her questions about how she feels about testifying to elicit the fact that she is essentially holding herself together because to let go at all would open the floodgates.

With respect to exhibiting anger, however, it is important to make victims aware that defense attorneys may cross-examine them precisely to provoke anger and thereby discredit them with the judge and jury. In the Queens, New York case cited above, one of the defense attorneys later discussed his strategy in dealing with nonstranger rape cases. Essentially it is to be smooth, low key and non-threatening but to keep prodding and probing until the victim shows anger and becomes a "non victim" or "unworthy victim." Thus, a victim should be prepared in such a way that she can resist being provoked to anger.

**Myth 11. A rapist is a subhuman-looking stranger, violent, mentally deranged, impulsive, with no access to consensual sex.**

**Fact: Rapists look like everyone else, come from all backgrounds, races and strata of society and are rarely violent in the sense of inflicting injuries apart from the rape itself. The vast majority of rapists have full access to consensual sex and they are not mentally diseased.** In the public mind there is an archetypal image of a rapist. While it may be comforting to believe that rapists are so different from the rest of the population that they are detectable on sight, this belief is completely contrary to fact.

**Most Rapists are Not Strangers.** As discussed in **Myth 1** above, **approximately 80% of rapes are committed by someone known or related to the victim.**

**Most Rapists Are Not "Violent," in the Traditional Sense.** In common parlance "violent" means someone who inflicts visible physical injuries. As earlier noted, in the *Rape in America* study 70% of victims reported sustaining no physical injury apart from the rape itself; 26% sustained minor physical injuries; 4% sustained serious physical injuries.<sup>83</sup> It must always be remembered, of course, that rape is an intrinsically violent act that causes profound psychological injury to the victim. Most rapists use only instrumental violence. That is, they use only the level of violence necessary to achieve their goal. As noted in Myth 3, the rapist's size alone may intimidate his victim into submission because she fears that resistance will result in serious physical injury or death.

**Most Rapists Are Not Mentally Diseased.** Until recently, most discussions of rape took a psychopathological perspective that rape is the result of mental illness and often includes an uncontrollable impulse. Empirical studies refute this. Although there are some rapists who are mentally ill, research puts the figure of men who were psychotic at the time of the attack at approximately 5%.<sup>84</sup> In the words of Dr. William Pithers, director of the sex offenders treatment program at Northwest Correctional Center in St. Albans, Vermont. **"Rape is a sick act committed by sane people."**<sup>85</sup> The notion that rapists are mentally diseased is further disproved by the extensive research into sexual aggression by ordinary, middle class, white male college undergraduates. Studies of this population by Professors Barry Burkart of Auburn University, Eugene Kanin of Purdue, Mary Koss of the University of Arizona and Neil Malamuth of the University of California, among others, demonstrate that between 12 and 15 percent of these young men have coerced women into having intercourse against their will.<sup>86</sup>

**Rapists Do Not Lack Access to Consensual Sex.** Another myth about rapists is that they have no access to consensual sex and turn to rape as a sexual outlet. Dr. Nicholas Groth, a pioneer in sex offender treatment who has assessed literally thousands of incarcerated rapists, has written, **"All the offenders we have seen were sexually active males involved in consenting sexual relationships at the time of their offense."**<sup>87</sup> When sociologist Diana Scully conducted extensive interviews with 114 incarcerated rapists, 89% estimated that before entering prison they and engaged in consensual sex at least twice a week; 42% indicated they had consensual sex at least once a day. Scully noted that if that frequency data seem high, one should bear in mind that the offenders were at their peak years of sexual activity.<sup>88</sup>

With respect to unincarcerated, undetected date rapists, Professor Eugene Kanin studied 71 self-disclosed, nonincarcerated date rapists: all white, middle-class, undergraduate students. He found these rapists to be "dramatically more [sexually] active than the controls." Kanin concluded, "The evidence does not lend to stereotyping these men as the sexually deprived...In fact, comparatively speaking, these men very successfully pursued a lively and positive interest in women, dating and sexual activity."<sup>89</sup>

**Rape is Not Caused by Alcohol.** Many sexual assault cases involve situations in which the rapist or the rapist and the victim were drinking. Alcohol is perceived as a "cause" of rape, as of domestic violence, when it is not a cause but a *disinhibitor* for those inclined to commit rape and battering.<sup>90</sup> In one study of convicted rapists 45% said their deviant arousal was increased by alcohol.<sup>91</sup> Rapists also encourage their victims to drink to make them more vulnerable. See **Myth 16.**

**Myth 12: Rape is a crime committed by black men on white women.**

**Fact: Rapists come from all racial backgrounds and the vast majority of rapes are intra-racial.** One of the most enduring myths about rape is that it is commonly committed by black men on white women. Department of Justice data from the National Crime Survey demonstrate the falsity of this myth. According to Bureau of Justice Statistics data from 1973-1987, 83% of the



rapes committed on white women by nonstrangers were committed by white men, and 91% of the rapes committed on black women by nonstrangers were committed by black men.<sup>92</sup> Given that the vast majority of sexual assaults are committed by someone the victim knows, these Bureau of Justice Statistics figures reveal that in the vast majority of rapes, the victim and the rapist are of the same race.

In the stranger rape category, 14% of stranger rapes involving black women were committed by white men; 30% of stranger rapes involving white women were committed by black men. Thus, **in stranger as well as nonstranger rape, the large majority of cases involve victims and rapists of the same race.**

**Myth 13. Rape is only about sex -- or -- Rape is only about violence.**

**Fact:** Whether rape is an expression of sex or an expression of violence is a constantly posed question. This question presumes a **false dichotomy**. The problem is that the question does not ask from whose point of view -- the rapist or the victim? Because the male fantasy of rape projects a woman first resisting but then enjoying the assault, any acknowledgment that rape is in part about sex -- from the point of view of the rapist -- may make the victim appear complicit. Rape is a violent, terrifying, degrading act for the victim even when, as in the vast majority of rapes, the rapist is someone she knows, there is no violence extrinsic to the rape itself, and she sustains no physical injury.<sup>93</sup> What rape means to the rapist, however, is a different story.

Sociologist Diana Scully analyzes the continuing debate:

In an effort to change public attitudes that are damaging to the victims of rape and to reform laws seemingly premised on the assumption that women both ask for and enjoy rape, the feminist position has emphasized the violent and aggressive character of rape. Often these arguments disclaim that sex plays any part in rape at all. This contrasts with the psychopathological position which emphasizes the sexual nature of rape and ignores the violence. I argue, however, that both positions miss the mark. **Rape is a violent act, but it is also a sexual act, and it is this fact that differentiates it from other crimes...** It is unfortunate that the rather swift public acceptance of the "rape as violence" model, even among groups who otherwise discount feminist arguments, has unintended implications....[E]mphasizing violence -- the victim's experience -- is....strategic to the continued avoidance of an association between "normal" men and sexual violence. Make no mistake, for some men, rape is sex -- in fact, for them, sex is rape. The continued rejection of this possibility, threatening though it may be, is counterproductive to understanding the social causes of sexual violence.<sup>94</sup>

Scully's assertion that for some men "rape is sex" and "sex is rape" is borne out by the experiences of those who treat sex offenders. One aspect of the cognitive-behavioral treatment model is an effort to replace attraction to deviant sexual arousal with attraction to normal sexual arousal. To accomplish this, offenders in treatment are asked to develop appropriate fantasies which they verbalize into a tape recorder while masturbating to orgasm. Roger Wolfe of Northwest Treatment Associates in Seattle has described the difficulty many sex offenders have in developing appropriate fantasies. According to Wolfe:

[The offenders'] perceptions of what is an appropriate fantasy are incredible. We have clients come in with their initial tapes and say, "I had a wonderful appropriate fantasy," and it turns out to be a tape describing what is essentially a rape!"<sup>95</sup>

Another reason the "rape equals violence" equation has gained such currency is that until the last few years, research into the psychology and motivations of rapists has been significantly distorted by the population of rapists to which researchers had access. Professor Eugene Kanin who conducted the first study of undetected college student date rapists, points out that since only a small percentage of rapes is reported, few rapes end in arrest and even fewer in incarceration:

Our knowledge about the rapist...is essentially derived from the study of criminal failures, that very small percentage of offenders who are not only apprehended but also convicted. Furthermore, this extraordinary selectivity may also be responsible for leaving us with a relatively homogeneous population of rapists, that is, a population whose offenses are of such a nature, e.g., involving extrinsic violence, gang rape, object rape and stranger rape, that they are significantly more apt to be reported prosecuted and convicted. And this homogeneity may be disarmingly responsible for the parochialism regarding the nature of rape found in professional writings, namely, the perspective that categorically views rape as a nonsexual offense.<sup>96</sup>

**Myth 14. Rape is caused by a "generic impulse" stimulated by the appearance, clothing or behavior of the woman.**

**Fact: Studies repeatedly show that rape is largely a planned and premeditated crime.**<sup>97</sup> Although some "date rapes" occur in the heat of moment, many date and acquaintance rapists go on dates or pick up women with the absolute intention of having sex and with no intention of respecting the woman's protestation if she is not equally interested. There are even rapists who deliberately court their victims, develop a consensual sexual relationship, and then rape them.<sup>98</sup> In the words of one expert on sex offenders, "The choice of victim is predominantly determined by availability, accessibility, and vulnerability . . . [t]he aim of the offender is to capture, conquer, and control his victim. Sexual desire, in and of itself, is not the primary or paramount issue operating in this assailant."<sup>99</sup>

Gang rapes by fraternities or groups of athletes are notorious examples of planning.<sup>100</sup> An example is the 1990 case referred to earlier involving a group of lacrosse players from St. John's University in Queens, New York. The ringleader pretended to befriend a female fellow student and offered her a ride to her home. On the pretext of needing money for gas, he drove her to the off-campus house he shared with his teammates. Once there, he pretended that he had to make a phone call and invited her into the house to wait. Once she was inside, he forced liquor on her until she was incapacitated, at which point he assaulted her and then left her to his buddies. His teammates--some admittedly and some allegedly--forced the victim to have oral sex, slapped her in the face with their penises, and fondled her breasts.<sup>101</sup>

**Myth 15. Black women are promiscuous and not harmed by forced sex.**

**Fact: Police, prosecutors, judges and jurors often trivialize violence against women of color.** Black rape victims are even less likely to report sexual assault than white victims for two reasons: an awareness of the bias that can affect black women and men in whatever capacity they may be involved with the justice system, and an awareness of the stereotypes that devalue the rape of black women.<sup>102</sup> A study of 331 jurors in Indianapolis rape cases revealed their adherence to stereotypes about black women as promiscuous and less harmed by forced sex,<sup>103</sup> resulting in extreme dismissiveness of black victims' claims.<sup>104</sup> In a recent New York case, a white male gynecologist was acquitted after claiming consent when charged with raping a black female patient who was on welfare on the examining table. A white male juror later wrote to the prosecutor that the jurors believed "a black woman like that would be flattered by the attentions of a white doctor."<sup>105</sup>

Even where guilt is found, the injury to rape victims of color may be devalued during sentencing. A study of sentences and plea bargains in Dallas rape cases found that while the median sentence for a black man who raped a white woman was 19 years, the median sentence for a white man who raped a black woman was 10 years. White/white rape produced a median sentence of 5 years, Hispanic/Hispanic rape produced a median sentence of 2.5 years, and Black/Black rape produced a sentence of 1 year.<sup>106</sup> In Texas, juries impose sentences and, in the words of a Dallas District Attorney, "juries set the benchmark sentences in Dallas, and...prosecutors consider those sentences when they negotiate plea bargains."<sup>107</sup>

The origins of racist myths about black women's promiscuity date back to slavery. Black women and men, because they came from Africa, were thought by whites to be closer to "the animal" and therefore more highly sexed than whites. During slavery, black women were subject to repeated rape by slave owners and overseers. White society, to cover these crimes, generated a myth about black women as highly sexed. As prominent historian Gerda Lerner has written,

By assuming a different level of sexuality for all blacks than that of whites and mythifying their greater sexual potency, the black woman could be made to personify sexual freedom and abandon. A myth was created that all black women were eager for sexual exploits, voluntarily "loose" in their morals and, therefore, deserved none of

the consideration and respect granted to white women. Every black woman was, by definition, a slut according to this racist mythology; therefore, to assault her and exploit her sexually was not reprehensible and carried with it none of the normal communal sanctions against such behavior.<sup>108</sup>

**Myth 16. You can't blame a guy if he's drunk and things get out of hand.**

**Fact:** Many sexual assault cases involve situations in which the rapist, the victim or both were drinking. Alcohol is perceived as a "cause" of rape, as well as of domestic violence. In fact **alcohol is not a cause, rather it loosens the inhibitions of those inclined to commit rape and battering.**<sup>109</sup> Research on this issue indicates that alcohol facilitates male aggression.<sup>110</sup> Alcohol also serves as an excuse for unacceptable sexual arousal and behavior.<sup>111</sup> Rapists who consume alcohol blame their actions on the beer or liquor, thus mitigating any sense of personal responsibility and they expect others to blame their behavior on the alcohol, again mitigating personal responsibility. Rapists and batterers often drink deliberately to give themselves an excuse to act out their aggression.<sup>112</sup> They also use alcohol to make their intended victims more vulnerable.

There is a double standard around men's and women's use of alcohol. His drinking excuses him. Hers is held against her. Men who drink are expected to lose control. Women who drink to excess are held responsible for the men's behavior as well as their own.<sup>113</sup> Men know so very well how much alcohol excuses their behavior that some offenders use it as a cover for their behavior even when it played no role in the origin of their crimes. One woman reported that she never understood why, when her husband -- who turned out to be a rapist -- sometimes splashed liquor on his face and clothes before going out for a walk.<sup>114</sup>

**Myth 17. Most rape charges are false.**

**Fact:** Certainly there are some false allegations.<sup>115</sup> **But on a statistical basis they appear to be infrequent, even less frequent than false allegations in other types of cases.**<sup>116</sup> The Portland Oregon police reported in 1990 that of the 431 rape and attempted rape complaints received, 1.6 percent were determined to be "unfounded" compared to 2.6 percent of stolen vehicle reports that were false.<sup>117</sup> A 1989 comparative analysis of data on false rape allegations reported a rate of 2%.<sup>118</sup> Many commentators have observed that rape laws have historically been premised on men's fear of women making false allegations of rape.<sup>119</sup> Lord Matthew Hale's jury instruction, barred as unconstitutional in many states<sup>120</sup> but still permitted in twenty-six,<sup>121</sup> asserts that an accusation of rape "is one which is easily made and, once made difficult to defend against, even if the person accused is innocent."<sup>122</sup>

But contrary to Lord Hale's allegation, rape is an extremely difficult crime to charge and the easiest of all to defend. Professor Gary LaFree of the University of New Mexico conducted an elaborate study of attrition and case outcome in the rape cases reported to Indianapolis police

in 1970, 1973 and 1975. He determined that of the 870 rape cases reported, 326 resulted in arrest, 154 ended in some type of sentence, and only 82 men were incarcerated.<sup>123</sup>

Discussion of so-called false allegations is confused by the confounding of false allegations with cases that are "unfounded"; that is, determined by police or prosecutors to be unverifiable, nonserious or unprosecutable.

For example, in 1975 the FBI published statistics that there were more false reports of rape than of any other crime.<sup>124</sup> In fact, the FBI does not publish statistics on false reports, and was referring here to "unfounded" complaints.<sup>125</sup> Such FBI statistics do not correctly identify what they purport to measure.

In most jurisdictions police can declare a complaint unfounded in their initial report.<sup>126</sup> Thus, cases can be declared unfounded after a routine, cursory investigation.<sup>127</sup> In so doing, police are often influenced by extralegal considerations and biases, and they evaluate victim credibility within the context of the rape myths described in this article.<sup>128</sup> Belief in rape myths raises the number of "unfounded" reports. Even in cases where victims sustained bruises, black eyes, cigarette burns and bitten nipples, police have "unfounded" cases if there was a previous sexual relationship between the parties.<sup>129</sup> Police are more likely to believe a victim if it is a stranger rape, if there was more than one offender, if weapons were used, if the victim made a prompt report, and if the victim had a reputation for chastity.<sup>130</sup>

In Oakland, California in 1990, 228 rape cases were reopened for investigation following disclosure that one in four reported rapes and attempted rapes were classified as "unfounded."<sup>131</sup> The police conceded that in some cases victims were not interviewed by the police and were never contacted after the initial report was made. Many of these victims were women of color, prostitutes, drug users, or were acquainted with their assailants. "Candidly, we blew it," the police chief said.<sup>132</sup>

In 1999 it was learned that for nearly twenty years, "thousands of women who [had] gone to Philadelphia police to report sexual assaults [had] been dismissed as liars or had their cases dumped in bureaucratic limbo."<sup>133</sup> To remedy the situation, the Police Commissioner instituted personnel changes and better training at the sex-crimes unit. The Special Victims Unit also initiated "an extraordinary review of hundreds of sexual-assault complaints that detectives had either rejected as groundless or filed in administrative categories where they did not show up in crime statistics."<sup>134</sup>

The military is notorious for summarily unfounding rape cases.<sup>135</sup> During the Persian Gulf War, for example, female soldiers' reports of sexual abuse by their male colleagues were summarily ignored.<sup>136</sup> It was only after the public scandal over the Navy's poor handling of the Tallhook convention incident at which twenty-six women were sexually abused by a gauntlet of Navy pilots<sup>137</sup> that charges about assaults during the war began to be taken seriously.<sup>138</sup>

## ENDNOTES:

<sup>1</sup> Morrison Torrey, *Rape Myths and the Idea of Fair Trial*, 24 U.C. DAVIS L.REV. 1013, 1050 (1991) (footnotes omitted).

<sup>2</sup> See CRIME VICTIMS RESEARCH AND TREATMENT CENTER, *RAPE IN AMERICA: A REPORT TO THE NATION* 5 (1992) [hereinafter *RAPE IN AMERICA*]. The study was funded by the National Institute of Drug Abuse because so many rape victims turn to alcohol and drugs to relieve their psychological trauma. To obtain: National Victim Center, 2111 Wilson Boulevard Suite 300, Arlington, Virginia 22201.

<sup>3</sup> *Id.* at 16.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 5. Three percent of the respondents were either unsure of their relationship to the rapist or refused to answer.

<sup>6</sup> Twenty-five state statutes include all forms of forced sexual penetration as rape; two states include all but digital/body part rape; six states include all but digital/body and object rape; two states include only vaginal and anal intercourse; one state includes any vaginal penetration; fifteen states include only vaginal intercourse. Memorandum from Rosemary Yu to Danielle Ben-Yehuda (Sept. 21, 1992) (on file with authors).

<sup>7</sup> Letter from Dr. Bonnie Dansky, Medical University of South Carolina Crime Victims Research and Treatment Center to Lynn Hecht Schafran, Director, National Judicial Education Program 1 (Aug. 15, 1992) (on file with author).

<sup>8</sup> A. Nicholas Groth, *MEN WHO RAPE* 3 (1979).

<sup>9</sup> Telephone interview with Dr. Anna C. Salter, Assistant Professor of Clinical Psychiatry and Maternal and Child Health, Dartmouth Medical School (June 8, 1992).

<sup>10</sup> *E.g.*, Diane E.H. Russell, *THE POLITICS OF RAPE* 19 (1974) (describing how a rape victim can be totally immobilized by a man's size).

In the stereotyped image of rape, a man jumps from the bushes with a knife or a gun. In fact, the majority of rapes involve no weapons at all. Approximately 80% of rapes are committed by nonstrangers. The Bureau of Justice Statistics found that a weapon was used in only 15% of nonstranger rapes. Caroline W. Harlow, U.S. Dep't of Justice, *Female Victims of Violent Crimes* 10 (1991).

<sup>11</sup> See, *e.g.*, *State v. Rogers*, 519 So.2d 246 (La. Ct. App. 1988) (victim believed attacker would kill her if she did not follow his instructions).

<sup>12</sup> *RAPE IN AMERICA*, *supra* note 2, at 5.

<sup>13</sup> JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 42-43 (1992) [hereinafter *HERMAN, TRAUMA*].

<sup>14</sup> *Id.* at 42.

<sup>15</sup> 641 F. 2d 1161 (1994). This case is discussed in Lynn Hecht Schafran, *Criminal Law: What is Forcible Compulsion?*, *THE JUDGES' JOURNAL*, Winter 1995, at 43.

<sup>16</sup> 872 P.2d 1183 (Cal. 1994).

<sup>17</sup> Ellison v. Brady, 924 F. 2d 872 (9th Cir. 1991)

<sup>18</sup> *Supra* note 15

<sup>19</sup> Transcript at 32, Pennsylvania v. Berkowitz (Pa. Commw. Ct. Sept. 1988) (No. 241-1988 Criminal).

<sup>20</sup> *Id.* at 36

<sup>21</sup> *Id.* at 38

<sup>22</sup> *Id.*

<sup>23</sup> HERMAN, TRAUMA, *supra* note 13, at 43 (emphasis added)

<sup>24</sup> Public outcry over this decision lead to a rewriting of Pennsylvania Rape Law to make clear that “no” means “no.”

<sup>25</sup> People v. Iniguez, 872 P.2d 1183, 1185 (Cal. 1994).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1187.

<sup>28</sup> *Id.* at 1186.

<sup>29</sup> *Id.* at 1186.

<sup>30</sup> People v. Harris, 108 Cal. App. 2d 84,89 (1951).

<sup>31</sup> People v. Iniguez, *supra* note 25, at 1189.

<sup>32</sup> *Id.* at 1189.

<sup>33</sup> RAPE IN AMERICA, *supra* note 2, at 5.

<sup>34</sup> Harriette C. Hampton, *Care of the Woman Who Has Been Raped*, NEW ENGLAND J. OF MEDICINE, Jan 26, 1995 at 234.

<sup>35</sup> People v. Iniguez, *supra* note 25, at 1186 (Cal. 1994). The California Supreme Court reinstated the rape conviction. This case is discussed above in Myth 3 because it deals with the aspect of rape trauma syndrome called "frozen fright."

<sup>36</sup> Recently Certified Sexual Assault Examiners have begun using a colposcope, a type of magnifier that can take photographs, to examine rape victims internally. In many victims of penile/vaginal penetration, they have documented a pattern of tiny tears in the vaginal vault that result when the female is not lubricated and not cooperating in the act of intercourse. Testimony from these experts, together with photographs or slides of these minute internal injuries have proved helpful in obtaining convictions. See, e.g., Linda E. Ledray and Barry Lee, *Sexual Assault: Clinical Issues. SANE Expert and Factual Testimony*, 24 Journal of Emergency Nursing 284 (June 1998); Leland C. Lenahan, *Colposcopy in Evaluation of the Adult Sexual Assault Victim*, 16 American Journal of

Emergency Medicine 183 (March 1998); Colleen O'Brien, *Improved Forensic Documentation of Genital Injuries with Colposcopy*, 23 Journal of Emergency Nursing 460 (Oct. 1997). [Note: Since this article was written the U.S. Department of Justice Office on Violence Against Women issued A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS: ADULTS/ADOLESCENTS (2004), available at <http://www.ncjrs.org/pdffiles1/ovw/206554.pdf>]

<sup>37</sup> Lynn Hecht Schafran, *Maiming the Soul: Judges, Sentencing and the Myth of the Nonviolent Rapist*, XX FORDAM UNIVERSITY LAW JOURNAL 439 (1993).

<sup>38</sup> Carolyn Hursch, THE TROUBLE WITH RAPE 78 (1977).

<sup>39</sup> RAPE IN AMERICA, *supra* note 2, at 8.

<sup>40</sup> *Id.* at 7. In a community study of crime victims reported by Dr. Judith Herman, of 100 female rape victims with an average of 9 years elapsed since the rape, 19.2% had attempted suicide. HERMAN, TRAUMA, *supra* note 13 at 49-50.

<sup>41</sup> *Id.* at 13.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> *Id.* at 5.

<sup>44</sup> Daniel C. Silverman et al., *Blitz Rape and Confidence Rape: A Typology Applied to 100 Consecutive Cases*, 145 AM J. PSYCHIATRY 1440 at Table I, (1988).

<sup>45</sup> Karla Fischer, *Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome*, 1989 ILL. L. REV. 691, 705-706, *see e.g. People v. Taylor*, 552 N.E.2d 131, 131 (N.Y. 1990) (allowing expert testimony on rape trauma syndrome to explain victim's conduct).

<sup>46</sup> Mary P. Koss et al., *Stranger and Acquaintance Rape*, 1 PSYCHOLOGY OF WOMEN Q. (1988).

<sup>47</sup> No. G008080, at 6-7 (Cal. Ct. App. Aug. 30, 1991).

<sup>48</sup> RAPE IN AMERICA, *supra* note 2, at 6; *see Vivian Berger, Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 15-20 (1977) (describing incidence of questioning woman's chastity when she brings rape charges); Julie R. Schwendiger & Herman Schwendiger, *Rape and Inequality*, 77 COLUM. L. REV. 10, 15-20, 17-29 (1983) (indicating that women defer reporting of sexual assaults due to traditional myths that blame victims).

<sup>49</sup> Video developed for Court of Queen's Bench of Alberta, Seminar on Gender Issues, November 16, 1990.

<sup>50</sup> *See Jean MacKeller, RAPE: THE BAIT AND TRAP* 86-87 (1975) (victims of stranger rape are more likely to report rape and be believed).

<sup>51</sup> *See, e.g., ANDREA PARROT & LAURIE BECHHOFFER EDS., ACQUAINTANCE RAPE: THE HIDDEN CRIME* (1991).

<sup>52</sup> RAPE IN AMERICA, *supra* note 2, at 6.

<sup>53</sup> *See MacKeller, supra* note 50, at 79 (unlike other crimes, victims of rape must prove assailant guilty and defend their own innocence).



<sup>54</sup> See SEDELLE KATZ & MARY ANN MAZUR, UNDERSTANDING THE RAPE VICTIM: A SYNTHESIS OF RESEARCH FINDINGS 185-86 (1979) (women tend not to report rape due to shame and embarrassment associated with being victims) (hereinafter KATZ & MAZUR).

<sup>55</sup> 1990 REPORT OF THE ILLINOIS TASK FORCE ON GENDER BIAS IN THE COURTS 100 (1990) [hereinafter ILLINOIS REPORT].

<sup>56</sup> Silverman et. al., *supra* note 44, at 1445.

<sup>57</sup> Elizabeth Ashley, *Rape and Denial*, PEOPLE, Aug. 16, 1993, at 99.

<sup>58</sup> Michael Marriott, *State Attorney Says Mets Will Not Face Criminal Charges*, N.Y. TIMES, Apr. 10, 1992 at B13; see also KATZ & MAZUR, *supra* note 54, at 215-231 (explaining various reactions victims must deal with in attempting to overcome the trauma).

<sup>59</sup> See STEDMAN'S MEDICAL DICTIONARY 1164 (1982) (defining "psychogenic amnesia" as loss of memory resulting from severe emotional distress).

<sup>60</sup> Interview with Marjory Fisher, Esq., Chief, Special Victim's Bureau, District Attorney's Office, Queens, New York, New York, N.Y. (May 12, 1992).

<sup>61</sup> ILLINOIS REPORT, *supra* note 55.

<sup>62</sup> These clinician/researchers were Ann Burgess & Linda Holmstrom.

<sup>63</sup> Sally I. Bowie et al., *Blitz Rape and Confidence Rape: Implications for Clinical Intervention*, 64 AM. J. OF PSYCHOTHERAPY 180 (1990).

<sup>64</sup> *Id.* at 184-85.

<sup>65</sup> Allison Bass, *"Date Rape" Victims Bear Scars Longer, Study Finds*, BOSTON GLOBE, Sept. 30, 1991, at 1.

<sup>66</sup> Dean G. Kilpatrick et al., *Rape in Marriage and Dating Relationships: How Bad is it for Mental Health? in HUMAN SEXUAL AGGRESSION: CURRENT PERSPECTIVES* 335 (Robert A. Prentky and V.L. Quinsey eds., 1988).

<sup>67</sup> Koss et al., *supra* note 46, at 14.

<sup>68</sup> Cf. DIANA E.H. RUSSELL, RAPE IN MARRIAGE 17 (1990) (describing numerous cases of marital rape and noting that until recently rape law excluded marital rape by definition).

<sup>69</sup> See DAVID FINKELHOR & KERSTI YLLO, LICENSE TO RAPE: SEXUAL ABUSE OF WIVES 13-15 (1985).

<sup>70</sup> Koss et al., *supra* note 46; Finkelhor & Yllo, *supra* note 69 at 22-36; Russell, *supra* note 68, at 184.

<sup>71</sup> *Prosecutor: Man Taped Wife's Rape*, THE STATE, Apr. 22, 1992 at 1A; *150 at Capitol Protest Rape Verdict*, THE STATE, Apr. 22, 1992, at 1A.

<sup>72</sup> RUSSELL, *supra* note 68, at 77. See also FINKELHOR & YLLO, *supra* note 73.

<sup>73</sup> RUSSELL, *supra* note 68 at 130-131 (indicating that marital rape is more common in lower income groups, but

also occurs in higher income groups).

<sup>74</sup> Dean G. Kilpatrick et al., *The Aftermath of Rape: Recent Empirical Findings*, 49 AM. J. ORTHOPSYCHIATRY 658, 668 (1979).

<sup>75</sup> See Fischer, *supra* note 45, at 705-706 (citing symptoms experienced by victims up to two and one half years after assault).

<sup>76</sup> Dean G. Kilpatrick et al., *Criminal Victimization: Lifetime Prevalence, Reporting to Police, and Psychological Impact*, 33 CRIME & DELINQUENCY 479 (1987).

<sup>77</sup> Dean Kilpatrick et al., *Effects of a Rape Experience: A Longitudinal Study*, 37 J. OF SOC. ISSUES 105, 119 (1981).

<sup>78</sup> HERMAN, TRAUMA, *supra* note 13, at 211. These milestones typically are marriage, divorce, a birth or death in the family, illness, or retirement.

The information coming to public attention about the way rape trauma fits into the spectrum of post traumatic stress syndromes that affect men as well as women may promote understanding of the psychological trauma of rape. The example of Vietnam veterans who experience nightmares, flashbacks, and depression long after the war can help others to understand rape victims' nightmares, flashbacks, and depression long after the assault.

However, rape may continue to stand out among these traumatic events as the one whose harms will be more difficult to appreciate. Combat, hostage-taking, torture, child abuse and domestic violence all involve readily understood fist-in-the-face violence. Child sexual abuse is generally condemned by society. But the fact that rape involves a sexual component and little traditional physical violence distorts understanding of this crime.

<sup>79</sup> Nicholas Varchaver, *Inside the St. Johns's Jury Room*, MANHATTAN LAWYER, 16,21 (Sept. 1991).

<sup>80</sup> *Id.*

<sup>81</sup> *Painful Odyssey*, N.Y. NEWSDAY, (Feb. 13, 1992).

<sup>82</sup> Barry Burkhart, Conceptual and Practical Analysis of Therapy for Acquaintance Rape Victims, in 94 A. Parrot, *Acquaintance Rape: The Hidden Crime* 299 (1991).

<sup>83</sup> RAPE IN AMERICA, *supra* note 2 at 5.

<sup>84</sup> Gene Abel, et al., *Aggressive Behavior and Sex*, 3 PSYCHIATRIC CLINICS OF NORTH AMERICA 133 (1980).

<sup>85</sup> David Gelman, *The Mind of the Rapist*, NEWSWEEK 46, 49 (July 23, 1990).

<sup>86</sup> This research is reviewed in Barry Burkhart & Annette Stanton, *Sexual Aggression in Acquaintance Relationships*, in VIOLENCE IN INTIMATE RELATIONSHIPS (W. Russell, ed. 1988).

<sup>87</sup> A. Nicholas Groth & William F. Hobson, *The Dynamics of Sexual Assault*, in SEXUAL DYNAMICS OF ANTI-SOCIAL BEHAVIOR 161 (Louis B. Schlesinger & Eugene Revitch, eds. 1983).

<sup>88</sup> DIANA SCULLY, UNDERSTANDING SEXUAL VIOLENCE 70-74 (1990) .

<sup>89</sup> Eugene Kanin, *Date Rape: Unofficial Criminals and Victims*, 9 VICTIMOLOGY 95, 99 (1984).

<sup>90</sup> Anna Salter, *TREATING SEX OFFENDERS: A CURRICULUM FOR CORRECTIONS MENTAL HEALTH PROFESSIONALS* 229 (1989).

<sup>91</sup> *Id.*

<sup>92</sup> CAROLINE W. HARLOW, U.S. DEP'T OF JUSTICE, *FEMALE VICTIMS OF VIOLENT CRIMES* 10 (1991).

<sup>93</sup> Schafran, *Maiming the Soul*, *supra* note 37 at 1018-1019.

<sup>94</sup> Scully, *supra* note 88 at 142-143.

<sup>95</sup> Interview with Roger Wolfe of Northwest Treatment Associates, in Seattle, WA (Sept. 30, 1981), *quoted in F.H. Knopp, Retraining Adult Sex Offenders: Methods and Models* 12 (1984).

<sup>96</sup> Kanin, *supra* note 89, at 95-96.

<sup>97</sup> See, e.g., Menachem Amir, *PATTERNS IN FORCIBLE RAPE* (1971); Martin & Hummer, *Fraternities and Rape on Campus*, 3 *GENDER & SOCIETY* 4547 (1989).

<sup>98</sup> Liz Hecht, *Stalking the Personals*, *NEW YORK WOMAN* (1991); see also Julia R. Schwendiger & Herman Schwendiger, *RAPE AND INEQUALITY* 482 (1986).

<sup>99</sup> Groth, *supra* note 8, at 29.

<sup>100</sup> See generally Peggy Sanday, *FRATERNITY GANG RAPE* (1990).

<sup>101</sup> See Edward Frost, *Inside Stories Reveal Details of Sex Case*, *NAT. L.J.* 41 (June 24, 1991), (describing attack); Heide E. Herr, *St. John's Lessons in Misogyny, Wham!* *FRONTLINER* 3 (Spring 1992); Alisa Solomon, *Unreasonable Doubt*, *VILLAGE VOICE* 2 (Aug. 6, 1991); Curtis L. Taylor, *Sex Suspect 'Wasn't There'*, *NEWSDAY* 20 (Feb. 4, 1992); Nicholas Varchaver, *Inside the St. John's Jury Room*, *MANHATTAN LAWYER* 17 (Sept. 1991).

<sup>102</sup> Gail Wyatt, *The Sociocultural Context of African American and White American Women's Rape*, 48 *J. of Social Issues* 77, 86 (1992).

<sup>103</sup> E.g., A. Leon Higginbotham, *Race, Sex, Education and Missouri Jurisprudence*, 67 *Wash. U.L.Q.* 673, 680-88 (1989); Jennifer Wiggins, *Rape, Racism and the Law*, 6 *HARV. WOMEN'S L.J.* 103 (1983).

<sup>104</sup> Gary LaFree et.al., *Jurors' Response to Victims' Behavior and Legal Issues in Sexual Assault Trials*, 32 *SOCIAL PROBLEMS* 389 (1985).

<sup>105</sup> Telephone interview between Lynn Hecht Schafran, Director, NJEP and Barbara Eggenhauser, Assistant District Attorney, Westchester County, N.Y. (April 21, 1992).

<sup>106</sup> Ray F. Herndon, *Race Tilts the Scales of Justice*, *DALLAS TIMES HERALD*, Aug. 19, 1990, at A1. The article discusses the roles and interrelationship of race and class in all sentencing, pointing out that poor victims are generally devalued by the courts, and that being poor and black or Hispanic is "probably doubly bad." *Id.*

<sup>107</sup> *Id.* at A22

<sup>108</sup> *BLACK WOMEN IN WHITE AMERICA: A DOCUMENTARY HISTORY* 163 (Gerda Lerner, ed.) (1973).

<sup>109</sup> See SUSAN BROWNMILLER, *AGAINST OUR WILL* 184 (1975). See Salter, *supra* note 102, at 229; DANIEL H. COLEMAN & MURRAY A. STRAUSS, *ALCOHOL ABUSE AND FAMILY VIOLENCE*, IN *DRUG ABUSE AND AGGRESSION* 105 (Guttheil et al., eds. 1983). See generally DIANA E.H. RUSSELL, *SEXUAL EXPLOITATION* 137-52 (1984) (discussing factors reducing inhibitions against rape).

<sup>110</sup> W. Burky et al., *Dating Violence Among High School Students*, *THE SCHOOL COUNSELOR* 353, 353-58 (1988) (alcohol consumption facilitated sexual attack); E.R. DeSouza, et al., *Perceived Sexual Intent in the U.S. and Brazil as a Function of Encounter Subject's Nationality and Gender*, 29 *J. SEX RES.* 251 (1992).

<sup>111</sup> See Deborah R. Richardson & Georgia S. Hammock, *Alcohol and Acquaintance Rape*, in *ACQUAINTANCE RAPE: THE HIDDEN CRIME*, *supra* note 82, at 88 (alcohol often used to justify unacceptable sexual encounters);

<sup>112</sup> *Id.* at 89 (people frequently use alcohol as a justification for bad behavior); Amy Callahan and Suzette Parmley, *College Students Confront the Threat of Date Rape*, *BOSTON GLOBE*, Sept. 2, 1990, Sunday edition, at 1 (Boston College campus police stated alcohol was involved in 90% of sexual assaults increasing probability that those who committed assaults consumed alcohol to use as an excuse).

<sup>113</sup> *Id.* at 89 (alcohol is used as a tool to excuse men and blame women for rape); Russell, *supra* note 104, at 148-49 (alcohol operates to advantage of rapist by assisting to exonerate him while blaming the victim); See also DeSouza, *supra* note 108, at 252 (studies have shown women who drink before being raped are more often considered the party at fault).

<sup>114</sup> *Id.* at 230.

<sup>115</sup> See, e.g. *Sentence for Lie on Rape Charge Creates Debate*, *N.Y. TIMES*, July 8, 1990 at A10 (court ordering woman to apologize in newspaper and radio for false allegations of rape).

<sup>116</sup> See Karla Fischer, *Defining the Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome*, *U. ILL. L. REV.* 691, 691-92 (1989) (experts believed that only 2-4% of victims falsely assert that rape occurred); Deborah G. Goolsby, *Using Mediation in Cases of Simple Rape*, 47 *WASH. & LEE L. REV.* 1183, 1192 (only 2-4% of rape is falsely reported yet officials are skeptical about believing rape occurred); Torrey, *supra* note

<sup>117</sup> "Rape: Shattering Myths," *THE SUNDAY OREGONIAN*, January 5, 1992 at A11.

<sup>118</sup> KATZ & MAZUR, *supra* note 54, at 212-213

<sup>119</sup> E.g. CHAPPEL ET AL., *FORCIBLE RAPE: THE CRIME, THE VICTIM AND THE OFFENDER* 74 (1977) (noting rape laws historically reflected fear rape charges would result in false convictions); DEBORAH RHODE, *JUSTICE AND GENDER* 244-45 (1989).

<sup>120</sup> See, e.g. *Marr v. State*, 494 So. 2d 1139, 1142 (Fla. 1986) (eradicating Lord Hale's jury instruction from Florida law); *State v. Willis*, 394 N.W. 2d 648, 651 (Neb. 1986) (holding state legislature intended to dispel Lord Hale's conception of rape when it altered state's first degree sexual assault statute); *State v. Bashaw*, 672 P.2d 48, 49 (Or. 1983) (stating that Lord Hale's jury instruction should not be used).

<sup>121</sup> A. Thomas Morris, Book Note, *The Empirical, Historical and Legal Case Against the Cautionary Instruction: A Call for Legislative Reform*, 1988 *DUKE L. J.* 154 (1988).

<sup>122</sup> Vivian Berger, *Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 77 *COLUMBIA L. REV.* 10

(1977) (summarizing early rape law).

<sup>123</sup> Gary LaFree, *supra* note 104, 129-131.

<sup>124</sup> FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 10 (1975) at 10.

<sup>125</sup> Telephone interview with Mary Simons, FBI Uniform Crime Report Unit, New York, N.Y. (Sept. 18, 1992).

<sup>126</sup> LaFree, *supra* note 104, at 56.

<sup>127</sup> *See id.* (noting police discretion in decision to arrest).

<sup>128</sup> *See* Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 978 (1991) (noting male police response based on stereotypes of women); Rene Augustine, *Marriage: The Safe Haven for Rapists*, 29 J. FAM. L. 559, 564 (1990-91) (most marital rape charges did not survive police investigation); *See also* Helen R. Holden, Comment, *Does the Legal System Batter Women? Vindicating Battered Women's Constitutional Rights to Adequate Police Protection*, 21 ARIZ. ST. L.J. 705, 709 (1989) (police criticized for failure to enforce rape and domestic violence complaints). *See generally* MICHAEL K. BROWN, WORKING THE STREET 214 (1981) (police take into account race, sex, personality, characteristics and drugs in evaluating whether to make an arrest); HERMAN GOLDSTEIN, POLICING A FREE SOCIETY, 34-35 (discussing police role in rape complaints); JEAN MACKELLER, RAPE: THE BAIT AND THE TRAP (1975) 82-83 (questions police asked of typical rape victim indicate police believe in rape myths).

<sup>129</sup> KATZ & MAZUR, *supra* note 54; *See also* Augustine, *supra* note 128, at 563 (married women who report rape less likely to receive assistance from police intervention).

<sup>130</sup> KATZ & MAZUR, *supra* note 54 at 10; MacKeller, *supra* note 117 at 87 (if victim had friendly relationship with offender before incident, case has little chance in court); Pamela L. Wood, *The Victim in a Forcible Rape Case: A Feminist View*, in RAPE VICTIMOLOGY 194, 205-12 (George Schultz ed. 1975) (historically, lack of chastity, failure to resist, and waiting to report rape have adversely affected likelihood that woman will be believed); Berger, *supra* note 122 at 15-20 (courts consider a woman's virtue in evaluating whether she consented); *See also, e.g.,* People v. Collins, 186 N.E.2d 30, 33 (Ill. 1962) (considering prior sexual conduct in evaluating issue of consent).

<sup>131</sup> *Prosecution Seen as Unlikely in 228 Rape Cases in Oakland*, N.Y. TIMES, Nov. 13, 1990, at B10 (prosecution of cases considered unlikely because victims were hard to find or unwilling to cooperate).

<sup>132</sup> *Oakland to Reopen Rape Cases*, SAN FRANCISCO EXAMINER, Sept. 18, 1990 at A1.

<sup>133</sup> *Women Victimized Twice in Police Game of Numbers: An Investigation Shows the Rape Squad Polished Its Numbers by Disregarding Thousands of Cases*, PHILADELPHIA INQUIRER, Oct. 17, 1999.

<sup>134</sup> *Police Checking into Old Sex Cases: The Department is Reviewing Hundreds of Sexual Assault Complaints in Philadelphia Dating from Early '98*, PHILADELPHIA INQUIRER, Oct. 29, 1999.

<sup>135</sup> *See, e.g.* Molly Moore, *Navy Failed to Prosecute in 6 Rapes*, WASH. POST, Oct. 22, 1990, at A1 (Navy had serious problem with rapes at training center in Orlando but offenders did not receive appropriate punishment); CNN News: *Military Rape Victims Plead for Recognition of Problem* (CNN broadcast, June 30, 1992), available in LEXIS, NEXIS library, SCRIPT file (female military members complaining of rape received little assistance from Veteran's Administration).

<sup>136</sup> Elaine Sciolino, *Military Women Report Pattern of Sexual Abuse by Servicemen*, N.Y. TIMES, June 30, 1992 at A1; Letta Taylor, *Operation Parity: Assaults Renew on Debate Over Role of Women*, NEWSDAY, July 27, 1992, (Army records indicate at least twenty-four women raped during Gulf War and officers slow to respond to complaints).

<sup>137</sup> Eric Schmitt, *Navy Investigations: A Raft of Failures*, N.Y. TIMES, June 28, 1992, A6; Ron Martz, *Lessons from the Hill -- Military is Beginning to Change Attitude*, ATLANTA J. & CONST., Oct. 5, 1992, at C4 (admirals forced to retire after poorly investigating Tailhook scandal).

<sup>138</sup> *Court-Martial Is Set on Sex Assault Charge*, N.Y. TIMES, Aug. 30, 1992 at A27.